

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of	)	
	)	
SAMHSA Petition for Permanent Reassignment	)	CC Docket No. 07-271
of Three Toll Free Suicide Prevention Hotline	)	
Numbers	)	
	)	
Toll Free Service Access Codes	)	CC Docket No. 95-155
	)	
	)	

To: The Commission

**COMMENTS OF THE KRISTIN BROOKS HOPE CENTER**

Danny E. Adams  
Todd D. Daubert  
J. Isaac Himowitz  
KELLEY DRYE & WARREN LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007  
(202) 342-8400  
(202) 342-8451 (facsimile)  
dadams@kelleydrye.com

Counsel for Petitioner  
KRISTIN BROOKS HOPE CENTER

December 7, 2007

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**COMMENTS OF THE KRISTIN BROOKS HOPE CENTER**

The Kristin Brooks Hope Center ("KBHC"), by its attorneys, hereby submits these comments in the above referenced docket opposing the Substance Abuse and Mental Health Service Administration's ("SAMHSA") Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers ("the Petition").<sup>1</sup> KBHC believes that Commission consideration of any permanent transfer of the suicide prevention hotline numbers is premature and legally barred until the Commission first resolves the objections raised by KBHC in its Application for Review<sup>2</sup> of the Wireline Competition Bureau's order temporarily transferring control of the suicide prevention numbers to SAMHSA.<sup>3</sup> The SAMSHA Petition

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<sup>1</sup> U.S. Dep't of Health and Human Svcs. Substance Abuse and Mental Health Svcs. Admin. Petition for Permanent Reassignment Of Three Toll Free Suicide Prevention Hotline Numbers, *In the Matter of Toll Free Service Access Codes*, CC Docket No. 95-155 (filed Nov. 20, 2007) (hereinafter "SAMHSA Petition" or "Petition").

<sup>2</sup> KBHC Application for Review, *In the Matter of Toll Free Service Access Codes*, CC Docket No. 95-155 (filed Feb. 21, 2007) (Attachment A).

<sup>3</sup> *In the Matter of Toll Free Service Access Codes*, Order, 22 FCC Rcd 651 (2007) (hereinafter "800-SUICIDE Order" or "Order") (granting the request of the SAMHSA to reassign temporarily three toll free numbers utilized as suicide prevention hotlines from KBHC to SAMHSA).

cannot be granted without having the direct and immediate effect of denying the KBHC Application for Review. Therefore, as a matter of law the Commission must first resolve the issues raised by KBHC in its Application for Review before any grant of the SAMHSA Petition.<sup>4,5</sup> In fact, a more appropriate procedural approach would be to consider the SAMHSA Petition in the same docket as the KBHC Application for Review, which has been pending before the Commission for several months. In view of the fact that the key underpinning of the *WCB Order* temporarily reassigning the numbers was the state of KBHC's finances, and that many months have passed since those facts were discussed, the Commission should issue a Public Notice to refresh the record prior to taking any permanent action on the Application or the SAMHSA Petition. A temporary extension of the prior reassignment for that purpose could provide the necessary time for this important exercise.

## **BACKGROUND AND INTRODUCTION**

### **The Kristin Brooks Hope Center**

The Kristin Brooks Hope Center is a private, non-profit organization dedicated to suicide prevention. H. Reese Butler founded KBHC as a means of paying tribute to his wife and as a way of providing hope to others struggling with depression shortly after his wife, Kristin Brooks, committed suicide in 1998. Initially funded by the sale of his home and the funds from his wife's life insurance, KBHC has grown in size and scope, and now operates numerous help lines that provide critical counseling services to people in need through the use of toll free

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<sup>4</sup> *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 330-33 (1945) (requiring the Commission to address mutually exclusive claims together).

<sup>5</sup> Because SAMHSA's and KBHC's use of the suicide prevention hotlines is mutually exclusive, *see id.*, any communications between SAMHSA and the FCC should be reported as an ex parte communication in the appropriate dockets. Currently, no such communication has been reported in either docket. However, KBHC has filed a Freedom of Information Act request with both the FCC and SAMHSA, and will report what it learns from these requests to the Commission. FCC FOIA Control No. 2008-107; SAMHSA FOIA Control No. 2008-144CM.

numbers.<sup>6</sup> Prior to the WCB's *800-SUICIDE Order* temporarily taking away three of its lines, KBHC also operated 800-SUICIDE, 888-SUICIDE, and 877-SUICIDA.<sup>7</sup>

KBHC uses an automatic number identification system to immediately route callers – who are depressed or suicidal, or who are concerned about someone who is depressed or suicidal – to a trained crisis line worker who can make a lethality assessment and determine what steps to take, up to and including immediate intervention. The suicide hotlines are really routing mechanisms for hundreds of local suicide prevention organizations. While many of these local organizations maintain their own numbers, they also receive calls from individuals located near them who have called one of KBHC's suicide hotlines. For many of these local crisis centers, KBHC's services provide the majority of the incoming calls. Constant 24 hour staffing and the use of advanced routing technology ensures that a trained crisis counselor will be on the line within twenty to thirty seconds of an individual dialing one of KBHC's numbers, regardless of the time of day. Since KBHC began operating the 888-SUICIDE hotline more than eight years ago (and 800-SUICIDE seven years ago), the hotlines have received more than two million phone calls, or approximately six-hundred-fifty calls per day.

KBHC has received numerous awards and accolades for the services it provides. Additionally, Mr. Butler has been called on repeatedly to address suicide prevention conferences, often as the keynote speaker or as conference Chairman. In 1999, the City of San Francisco honored KBHC for creating "Reason to Live Day." In 2000, Governor Glendening of Maryland honored KBHC and Reese Butler for their efforts in preventing suicide by creating the SUICIDE

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<sup>6</sup> These numbers currently operated by KBHC include (800) 442-4673 [800.442.HOPE]; (877) 838-2838 [977.VET2VET]; (800) 722-9498; (800) 827-7571; (866) 771-1276; (866) 968-8454 [866.YOUTHLINE]; (888)861-8460; (877) 495-0009; (800) 472-3457 [800.GRADHLP]; (877) 472-3457 [800.GRADHLP]; (800)773-6667 [800.PPD.MOMS].

<sup>7</sup> KBHC obtained a trademark for 800-SUICIDE on September 9, 2003. Until the WCB's release of the *800-SUICIDE Order*, these numbers featured prominently in KBHC's fundraising material.

hotlines. In 2001, Mr. Butler was the keynote speaker at the Contact USA 34th Annual Conference and the Tennessee Third Annual Suicide Prevention conference, and also co-chaired the Virginia Suicide Prevention Conference. Over the next two years, Mr. Butler gave the keynote address at the Tennessee Fifth Annual Suicide Prevention Conference and was honored by Governor Jeb Bush at the Florida State Capitol. In February 2004, he also received a personal letter of appreciation from Governor Bush's wife, Columba Bush.

### **The Dispute with SAMHSA**

Prior to December 2004, KBHC received a substantial portion of its funding for the operation of the suicide hotlines and its other crisis prevention hotlines from a federal government mental health grant administered by the Substance Abuse and Mental Health Services Administration, an agency under the Department of Health and Human Services. When its participation in that program ended, KBHC received support from the National Mental Health Association for two years. When that support ended, KBHC continued to operate the toll free suicide and crisis prevention hotlines with money generated from its own fundraising efforts.

During the summer of 2006, KBHC fell behind in its payments to its carrier, Patriot Communications. This circumstance led to negotiations between KBHC, its carrier, and SAMHSA. As a result of those negotiations, SAMHSA agreed to pay temporarily the carrier invoices on behalf of KBHC beginning August 26, 2006, until the issues surrounding KBHC's funding were resolved. By the beginning of January 2007, KBHC had no payments outstanding to Patriot Communications.

On December 12, 2006, SAMHSA submitted a request to the FCC asking that the Commission unilaterally order KBHC's Resp Org to reassign five of KBHC's numbers to

SAMHSA in the SMS/800 database.<sup>8</sup> The justifications for this highly unusual request were (i) that the threat of termination of service by KBHC's carrier created an "emergency" and (ii) that KBHC did not have the financial ability to operate the numbers, thus jeopardizing their continued operation. KBHC duly opposed this request, and in its filings demonstrated that SAMHSA's concerns were unfounded.

On January 22, 2007, the Wireline Competition Bureau ("WCB" or "Bureau") partially granted SAMHSA's request, temporarily transferring three toll free numbers (800 SUICIDE, 888-SUICIDE, and 877-SUICIDA) from KBHC to SAMHSA for the period of one year.<sup>9</sup> The WCB took this action despite a lack of record evidence as to KBHC's financial status, and despite a statement from KBHC's carrier that it would not, in fact, cease service as SAMHSA alleged. On February 21, 2007, KBHC filed an Application for Review of the Bureau's action with the Commission. In the ensuing 11 months since the Bureau issued the *800-SUICIDE Order* based on SAMHSA's statements regarding KBHC's alleged financial inability to operate the numbers, KBHC has continued to operate its other 11 toll-free lines without incident or financial trouble. The Commission has not yet ruled upon KBHC's Application for Review.

On Monday, November 20, 2007, two days before Thanksgiving, SAMHSA filed its Petition for permanent reassignment of the three toll free suicide prevention hotline numbers, without providing notice to KBHC or KBHC's counsel of record. Additionally, to the best of

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<sup>8</sup> Letter from Eric Broderick, Assistant Surgeon General, to Kevin Martin, Chairman, Federal Communications Commission (Dec. 12, 2006); Letter from Michael Leavitt, Secretary of Health and Human Services, to Kevin Martin, Chairman, Federal Communications Commission (Aug. 25, 2006).

<sup>9</sup> *800-SUICIDE Order*, 22 FCC Rcd at 651.

KBHC's knowledge, no ex parte filing was entered regarding any meetings or telephone discussions between SAMHSA and FCC staff.

## **ARGUMENT**

### **I. THE COMMISSION MUST FIRST ADDRESS THE ISSUES RAISED IN KBHC'S APPLICATION FOR REVIEW BEFORE CONSIDERING THE PETITION FOR PERMANENT REASSIGNMENT OF THE SUICIDE HOTLINES**

The Commission must act upon KBHC's Application for Review before entertaining SAMHSA's newest petition. The Bureau's decision in the *800-SUICIDE Order* denied KBHC the use of the numbers it obtained, advertised, and maintained for more than eight years, and has caused a significant disruption in the operation of KBHC. The arguments KBHC set forth in its Application for Review remain valid, and equally applicable to the permanent transfer SAMHSA now seeks, which is an extraordinary request. Because the three numbers at issue can only be assigned to one entity, grant of the SAMHSA Petition will constitute denial of the KBHC Application for Review. Therefore, prior to making any permanent decision, the Commission must first consider whether the initial decision to remove the numbers, even temporarily, was justified as a matter of law or advisable as a matter of public policy.<sup>10</sup>

In its Application for Review, KBHC raised four major objections to the *800-SUICIDE Order*.<sup>11</sup> The resolution of these objections will directly impact Commission consideration of the newest petition submitted by SAMHSA. First, KBHC asserts that the WCB's decision to temporarily transfer the numbers lacked evidentiary and factual support in the record, making the decision to transfer the numbers "arbitrary and capricious" in violation of

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<sup>10</sup> *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 330-33 (1945) (requiring the Commission to address mutually exclusive claims together).

<sup>11</sup> See Attachment A – KBHC's Application for Review.

the Administrative Procedure Act.<sup>12</sup> At no time did the evidence in the record support SAMHSA's claims of an emergency justifying a departure from the Commission's generally applicable rules. Similarly, the record did not support SAMHSA's unsubstantiated claims that KBHC's financial situation precluded it from continuing to operate the toll free numbers. Importantly, because SAMHSA's Petition alleges identical facts to those disputed by KBHC in its Application for Review of the *800-SUICIDE Order*, Commission resolution of KBHC's factual objections to the Bureau's *Order* as part of its response to KBHC's Application for Review likely will resolve the issues raised with respect to the current Petition as well.

Second, the Commission still needs to determine whether the WCB acted within its authority when it ordered the temporary transfer of the toll free numbers (an action not contemplated in the toll free number rules) in the absence of an actual emergency.<sup>13</sup> Without this nearly unprecedented action by the Bureau, the dispute would be in a dramatically different posture. As mentioned above, the "emergency" concern over KBHC's finances has not manifested itself in the 11 months since the Bureau issued the *800-SUICIDE Order*; KBHC continues to operate and pay for services for its other 11 toll-free numbers. Thus, the Commission should first determine whether the current situation arose legally within the existing framework of law before determining how this dispute should proceed on a permanent basis.

Third, as discussed at length in the Application for Review, the Commission should examine whether the WCB's *800-SUICIDE Order*, and any potential permanent order, violate the Due Process Clause.<sup>14</sup> To satisfy the requirements of the Fifth Amendment, the Commission must establish "reasonable, certain, and adequate provisions" for obtaining

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<sup>12</sup> Attachment A – KBHC's Application for Review at 6; 5 U.S.C. § 706(2)(A).

<sup>13</sup> Attachment A – KBHC's Application for Review at 10.

<sup>14</sup> *Id.* at 12.



compensation at the time of the taking.<sup>15</sup> No such provisions have yet been made for the temporary taking of the numbers, much less for the permanent taking thereof. The Commission should examine KBHC's claim relating to the temporary transfer of the numbers before moving on to what sort of compensation might be appropriate for a permanent transfer of the toll free numbers.

Fourth, the Commission should determine whether the temporary transfer of the toll free numbers truly served the public interest before determining whether a permanent transfer of the numbers may be justified.<sup>16</sup> The temporary reassignment made by the WCB in the *800-SUICIDE Order*, and any potential permanent reassignment, would be in direct contradiction of the Commission's policy of protecting the value end users develop in their assigned vanity numbers. In particular, the Commission should carefully weigh whether the ordered transfer of a non-profit organization's toll free resources might not discourage similarly benevolent private organizations from providing like services in the future. Furthermore, as discussed in the Application for Review, KBHC's services are superior to those of SAMHSA as KBHC serves a broader public and offers better privacy safeguards. In particular, KBHC can offer services to callers from Mexico and Canada – services that SAMHSA is statutorily barred from offering. Therefore, the Commission should first determine whether even the temporary transfer of the numbers serves the public before determining whether the leap to a permanent transfer of the numbers is truly in the public interest.

Finally, the failure of the Commission to resolve the Application for Review has substantially prejudiced KBHC. Without a final order of the Commission, KBHC has been unable to appeal the transfer of its numbers to the judiciary or to seek recompense for the loss of

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<sup>15</sup> *Williamson Cnty. Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194-95 (1985).

<sup>16</sup> Attachment A – KBHC Application for Review at 14.

its numbers under the Due Process Clause. 5 U.S.C. § 704. KBHC and its founder, Reese Butler, spent hundreds of thousands of dollars and countless hours over an eight year period publicizing the suicide prevention hotline numbers and building a network of local agencies to answer calls to them. The Bureau's *Order* transferring the numbers to SAMHSA has weakened that work (without due process or even so much as a factual inquiry to ascertain whether a real "emergency" existed), and Mr. Butler's hard work will be ruined unless the numbers are returned to KBHC. A final order of the Commission on the Application for Review would allow KBHC to seek redress in the event that the Commission chooses not to overturn the WCB's decision.

**II. NO EMERGENCY COMPELS IMMEDIATE ACTION UPON SAMHSA'S PETITION BY THE COMMISSION**

A delay in the current proceedings to allow the Commission time to address the issues raised by KBHC in Application for Review will not unduly prejudice the public, SAMHSA, or KBHC. As SAMHSA states in its Petition, the numbers will remain open and available to callers without interruption (excepting those callers outside of the United States) while the FCC deliberates. While SAMHSA provides an inferior service which has fewer local call centers, does not publicize the numbers for widespread acceptance (KBHC owns the trademarks on the suicide prevention hotlines), and includes regulations which discourage callers from using the numbers (primarily a failure to respect the privacy of callers), allowing an extension of the temporary assignment while the Commission conducts a proper investigation and legal review is a far better option than granting SAMHSA's Petition without inquiry or due process. As such, the Commission may take additional time to properly respond to KBHC's Application for Review without risking the interruption of the services currently provided by the hotlines.

Furthermore, SAMHSA will not be substantially prejudiced by any delay. In its Petition, SAMHSA indicates that if it continues to be assigned the suicide prevention hotline numbers, it will maintain the three suicide prevention hotlines and ensure their financial support.<sup>17</sup> SAMHSA has not indicated that its funding is contingent upon the Commission's permanent award of the toll free numbers. Indeed, any such statement would fly in the face of SAMHSA's statement as to the critical nature of the suicide prevention hotlines.<sup>18</sup> Moreover, if SAMHSA were to make such a claim, the Commission can merely reassign the numbers to KBHC, as it should do in any event. KBHC's performance during the nearly one year period since SAMHSA first alleged the false "emergency" SAMHSA claimed justified the removal of the suicide prevention hotlines from KBHC has shown that KBHC's operation of these numbers is the best option for the long term.

Finally, although the Commission's inaction on the Application for Review has impeded KBHC's ability to raise funds and generate awareness of its issues, KBHC feels that the benefits of fully developing the record in this proceeding outweigh the additional harm that any necessary continued delay may engender. Indeed, the Commission has a duty under the Act and its own rules to consider fully the important issues KBHC raised in its Application for Review, and renews in these comments, before moving forward with the permanent transfer SAMHSA requests. Failure to do so will cloud the transfer of the numbers, which would not serve the public interest.

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<sup>17</sup> SAMHSA Petition at 6, 7.

<sup>18</sup> *Id.* at 4 ("Suicide prevention hotlines are a critical public health resource").

### III. CONCLUSION

For the foregoing reasons and the reasons articulated in its Application for Review, KBHC respectfully requests that the Commission first resolve its pending Application for Review before addressing the issue of permanent reassignment raised in the SAMHSA Petition.

Respectfully submitted,



Danny Adams  
Todd D. Daubert  
J. Isaac Himowitz  
KELLEY DRYE & WARREN LLP  
3050 K. Street, NW, Suite 400  
Washington, DC 20007  
(202) 342-8400  
(202) 342-8451 (facsimile)  
dadams@kelleydrye.com

Counsel for Petitioner  
KRISTIN BROOKS HOPE CENTER

December 7, 2007

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# **KBHC COMMENTS**

## **ATTACHMENT A**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of )  
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SAMHSA EMERGENCY REQUEST FOR )  
THE PERMANENT REASSIGNMENT )  
OF FIVE TOLL FREE SUICIDE )  
PREVENTION NUMBERS )  
)  
)  
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CC Docket No. 95-155

To: The Commission

**APPLICATION FOR REVIEW**

Danny Adams  
Todd D. Daubert  
J. Isaac Himowitz  
KELLEY DRYE & WARREN LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007  
(202) 342-8400  
(202) 342-8451 (facsimile)  
[dadams@kelleydrye.com](mailto:dadams@kelleydrye.com)

Counsel for Petitioner  
KRISTIN BROOKS HOPE CENTER

February 21, 2006

## SUMMARY

Kristin Brooks Butler took her own life in 1998 after a long battle with bipolar disorder, leaving behind her husband, Reese Butler. Determined to create a legacy for his wife and to prevent similar tragedies, Mr. Butler took the proceeds of her life insurance policy and the proceeds from the sale of their home and founded the Kristin Brooks Hope Center ("KBHC"). Prior to that time, hundreds of local organizations sponsored "hotlines" and other suicide prevention counseling services, but there was no national organization to tie these groups together and coordinate their message. Reese Butler corrected that.

To mend this flaw in the American suicide prevention fabric, Mr. Butler started 888-SUICIDE to serve as a national hotline that same year. He organized the hundreds of small local organizations into a connected national group by routing calls received by the national number to the appropriate local counseling center based on the originating location of the inbound call. The following year, in 1999, KBHC and Mr. Butler expanded the service to the even more recognizable 800-SUICIDE. In the eight years since KBHC was founded, Mr. Butler added 12 more help lines to this network, including 877-SUICIDA, 877-VET2VET, 800-GRADHLP, 800-PPDMOMS, 800-442-HOPE (the Hope Center's signature hotline), and many more. Collectively, these help lines have handled more than two million calls and saved thousands of lives.

In early December 2006, SAMHSA submitted a request to the FCC asking the Commission to unilaterally order the transfer of five of KBHC's hotlines to SAMHSA. On January 22, 2007, the Wireline Competition Bureau, in disregard of the Commission's own rules, the toll free industry guidelines, and the SMS/800 Tariff, granted the Order in part, reassigning three of KBHC's numbers (1-800-SUICIDE, 1-888-SUICIDE, and 1-877-SUICIDA) to

SAMHSA for the period of one year. The WCB took this action based on unsupported or outdated assessments by SAMHSA of KBHC's financial situation and KBHC's disputes with its telecommunications carrier.

The *800-SUICIDE Order* is flawed procedurally in four important ways. *First*, there was no record to support its conclusion that the reassignment was needed to ensure an orderly transition of service without interruption. *Second*, there was no record evidence about KBHC's finances to support the conclusion that any threat to the continued availability of the suicide prevention hotlines existed. *Third*, no record evidence existed to support the proposition that KBHC's finances were even relevant to the potential loss of this critical public service. *Finally*, the order was beyond the authority delegated to the Wireline Competition Bureau. Commission rules grant the WCB authority to act only on requests which do not present novel questions of fact, law, or policy. The involuntary reassignment of a number from a private charity to a government agency is unprecedented in toll free number administration.

The *800-SUICIDE Order* is also flawed constitutionally. The reassignment of these numbers constitutes a government "taking." While traditional property rights do not attach to phone numbers, the right to use these numbers has an inherent value that the courts have recognized. Any taking must be done in a manner that provides for an adequate hearing, judicial oversight, and just compensation. Here, no such safeguards existed.

Finally, the *Order* is not in the public interest. It is the policy of the current administration to encourage the privatization of social services wherever possible. KBHC created these lines and built value in them through advertising. To forcibly remove them from KBHC and give them to the federal government, regardless of the government's intentions, would send a chilling message to non-profit organizations that provide critical public services.



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SAMHSA EMERGENCY REQUEST FOR )  
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PREVENTION NUMBERS )  
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CC Docket No. 95-155

**APPLICATION FOR REVIEW**

The Kristin Brooks Hope Center ("KBHC"), by its attorneys and pursuant to section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, hereby submits this Application for Review of the Order issued by the Chief of the Wireline Competition Bureau ("WCB") on January 22, 2007, granting the request of the Substance Abuse and Mental Health Services Administration ("SAMHSA") to reassign from KBHC to SAMHSA three toll free numbers utilized as suicide prevention hotlines.<sup>1</sup> Over the last eight years, KBHC has provided vital suicide prevention services by handling more than two million calls to the hotlines it operates, thereby saving thousands of lives. KBHC is ready, willing, and able to continue offering its consistently high level of service to those in need of help if and when the Commission orders the return of the hotline numbers to the service of KBHC. The vital services KBHC offers could have been ensured without forcibly transferring KBHC's numbers to SAMHSA, and therefore the Commission should overturn the *800-SUICIDE Order* and return the numbers to KBHC.

<sup>1</sup> In the Matter of Toll Free Service Access Codes, *Order*, DA 07-130 (rel. Jan. 22, 2007) (hereinafter "*800-SUICIDE Order*" or "*Order*").

## **BACKGROUND AND INTRODUCTION**

### **A. The Kristin Brooks Hope Center**

The Kristin Brooks Hope Center (“KBHC”) is a private, non-profit organization dedicated to suicide prevention. Since 1998, KBHC has operated toll free help lines to provide critical counseling services to people in need.<sup>2</sup> H. Reese Butler founded KBHC with the proceeds from his wife’s life insurance and the sale of his home shortly after his wife, Kristin Brooks, committed suicide in 1998. Until the recent action by the WCB, chief among the numbers KBHC operated and held as the subscriber of record were 800-SUICIDE, 888-SUICIDE, and 877-SUICIDA, each of which offers counseling to individuals in need of immediate mental health services. KBHC obtained a trademark for 800-SUICIDE on September 9, 2003, and regularly advertises that number and its services to the public. Additionally, KBHC uses the 800-SUICIDE trademark for fundraising purposes.

KBHC uses an automatic number identification system to immediately route callers – who are depressed or suicidal, or who are concerned about someone who is depressed or suicidal – to a trained crisis line worker who can make a lethality assessment and determine what steps to take, up to and including immediate intervention. The suicide prevention hotlines as operated by KBHC are really routing mechanisms for hundreds of local suicide prevention organizations. While many of these local organizations maintain their own numbers, they also receive calls from individuals located near them who have called one of KBHC’s suicide

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<sup>2</sup> Until the recent action by the WCB, the numbers operated by KBHC included: (800) 784-2433 [800.SUICIDE] ; (888) 784-2433 [888.SUICIDE]; (877)784-2432 [877.SUICIDA]; (800) 442-4673 [800.442.HOPE]; (877) 838-2838 [977.VET2VET]; (800) 722-9498; (800) 827-7571; (866) 771-1276; (866) 968-8454 [866.YOUTHLINE]; (877) 968-8454 [877.YOUTHLINE]; (888)861-8460; (877) 495-0009; (800) 472-3457 [800.GRADHLP]; (877) 472-3457 [800.GRADHLP]; (800)773-6667 [800.PPD.MOMS].

prevention hotlines.<sup>3</sup> For many of these local crisis centers, KBHC's services provide the majority of the incoming calls. Constant 24 hour staffing and the use of advanced routing technology ensures that a trained crisis counselor will be on the line within twenty to thirty seconds of an individual dialing the suicide prevention hotlines – regardless of the time of day. Since KBHC began operating the 888-SUICIDE hotline eight years ago (and 800-SUICIDE seven years ago), the hotlines have received more than two million phone calls, or approximately six-hundred-fifty calls per day.

KBHC has received numerous awards and accolades for the services it provides. Additionally, Mr. Butler has been called on repeatedly to address suicide prevention conferences, often as the keynote speaker or as conference Chairman. In 1999, the City of San Francisco honored KBHC for creating "Reason to Live Day." In 2000, Governor Glendening of Maryland honored KBHC and Reese Butler for their efforts in preventing suicide by creating the suicide prevention hotlines. In 2001, Mr. Butler was the keynote speaker at the Contact USA 34th Annual Conference and the Tennessee Third Annual Suicide Prevention conference, and also co-chaired the Virginia Suicide Prevention Conference. Over the next two years, Mr. Butler gave the keynote address at the Tennessee Fifth Annual Suicide Prevention Conference and was honored by Governor Jeb Bush at the Florida State Capitol. In February 2004, he also received a personal letter of appreciation from Governor Bush's wife, Columba Bush.

## **B. The Current Dispute**

The Kristin Brooks Hope Center has been the sole operator of the suicide prevention hotlines since it first began offering service in 1998. When KBHC began operating

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<sup>3</sup> The current proceeding involves the transfer of three numbers focused on suicide prevention. They are (800) 784-2433 [800.SUICIDE], (888) 784-2433 [888.SUICIDE], (877)784-2432 [877.SUICIDA] (collectively the "suicide prevention hotlines").

the 800-SUICIDE hotline in May 1999, it purchased toll free service from PacWest for a brief period of time before porting all of its toll free numbers to MCI. In June 2002, KBHC ported all 14 of its toll free numbers, including the suicide prevention hotlines, to AT&T. Four years later, in April 2006, KBHC ported all of its numbers, including the suicide prevention hotlines, to Patriot Communications.

Prior to December 2004, KBHC received a substantial portion of its funding for the operation of the suicide prevention and crisis hotlines through a federal government mental health program administered by the Substance Abuse and Mental Health Services Administration ("SAMHSA"), an agency under the Department of Health and Human Services. Starting in 2005, SAMHSA moved its funding to another toll-free number, (800) 273-TALK, operated by a private organization.<sup>4</sup> SAMHSA continues to fund (800) 273-TALK to this day.

When SAMHSA ceased funding KBHC's operation of 800-SUICIDE, KBHC continued to operate the toll free crisis and suicide prevention hotlines while it secured other sources of funding. During the summer of 2006, KBHC fell behind in its payments to Patriot. This circumstance led to negotiations between KBHC, Patriot, and SAMHSA. As a result of those negotiations, SAMHSA agreed to pay the Patriot invoices on behalf of KBHC temporarily, beginning August 26, 2006, until the issues surrounding KBHC's funding were resolved. In light of this arrangement, Patriot continued to receive payments for 800-SUICIDE until the Wireline Competition Bureau issued the number reassignment here at issue.<sup>5</sup>

During the course of the negotiations between KBHC, Patriot, and SAMHSA, KBHC agreed in August 2006 to permit 800-SUICIDE to be operated by SAMHSA. Initially,

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<sup>4</sup> The subscriber of record for (800) 273-TALK is SHS of Rockville, Maryland, a private organization.

<sup>5</sup> KBHC has recently resolved its dispute with Patriot in a settlement agreement which, among other things, extinguished KBHC's debt to Patriot and ended all litigation between them.

this agreement was to include the transfer of that number to SAMHSA. However, after consultation with counsel, KBHC was advised that such direct transfers of toll free numbers between end-users are inconsistent with FCC rules. KBHC then sought to revise the arrangement with SAMHSA to accomplish the objectives in a lawful manner. Between August 25, 2006 and the issuance of the *800-SUICIDE Order*, several meetings and numerous letters were exchanged in an unsuccessful attempt to resolve the situation. On November 28, 2006, Patriot indicated that it would cease providing service to the toll free numbers unless matters were resolved by January 8, 2007.

On December 12, 2006, SAMHSA submitted a request to the FCC asking that the Commission unilaterally order the Resp Org to register five of KBHC's numbers in SAMHSA's name.<sup>6</sup> The bases for this request were (i) that the possible January 8 termination of service created an "emergency" and (ii) that KBHC did not have the financial ability to operate the numbers, thus jeopardizing their continued operation. However, on January 3, 2007, Patriot stated to the Commission that it would not disconnect service to the suicide prevention numbers until the current dispute was resolved.<sup>7</sup> On January 22, 2007, despite Patriot's statement that it would not disconnect service, and without any evidence in the record concerning KBHC's finances, the Bureau granted SAMHSA's request in part, transferring 800-SUICIDE, 888-SUICIDE, and 877-SUICIDA to SAMHSA.<sup>8</sup>

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<sup>6</sup> Att. A -- Letter from Eric Broderick, Assistant Surgeon General, to Kevin Martin, Chairman, Federal Communications Commission (Dec. 12, 2006); Att. B -- Letter from Michael Leavitt, Secretary of Health and Human Services, to Kevin Martin, Chairman, Federal Communications Commission (Aug. 25, 2006).

<sup>7</sup> Opposition of Patriot Communications LLC to Kristin Brooks Hope Center's Petition for Cease and Desist Order and For Sanctions, *In the Matter of Kristin Brooks Hope Center and 1-800-SUICIDE*, CC Docket No. 95-155 (filed Jan. 3, 2007) at 1.

<sup>8</sup> The two other toll free numbers sought by SAMHSA were not reassigned, and are not in dispute for the purposes of the Application for Review. The non-disputed numbers are 800-442-4673 and 800-827-7571.

**ARGUMENT**

**I. THE ORDER TRANSFERRING CONTROL OF THE SUICIDE PREVENTION HOTLINES VIOLATES THE ADMINISTRATIVE PROCEDURE ACT.**

The Commission's toll free number regulations contain no provision allowing for toll free numbers to be transferred directly from one subscriber to another.<sup>9</sup> Specifically, § 52.103 provides only for numbers to be returned to Spare Status when subscribers no longer use them, and for the numbers to be made available to potential new subscribers on a "first come, first served" basis. Direct transfers of numbers between subscribers contravene the lag time and hoarding rules, and violate the "first come, first served" policy.<sup>10</sup> Any departure from the rules requires either a waiver procedure or an emergency – and neither was present here.

**A. The WCB's Order Was "Arbitrary and Capricious" in Violation of § 706(2)(A).**

The *800-SUICIDE Order* cites 47 C.F.R. § 52.111 as permitting a departure from the first come, first served number assignment rules when "otherwise directed by the Commission."<sup>11</sup> It states that the situation here was such an occasion. However, such Commission (or Bureau) directions to depart from established rules may be undertaken only in compliance with the Administrative Procedure Act. This it failed to do. The *800-SUICIDE Order* is arbitrary and capricious and inconsistent with the APA because it fails to state "relevant factors or articulate a rational connection between the facts found and the choice made."<sup>12</sup>

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<sup>9</sup> 47 C.F.R. §§ 52.101 *et seq.*

<sup>10</sup> Letter from L. Charles Keller, Chief, Network Services Division, Common Carrier Bureau to Michael Wade, President, DSML, *Re: Modifying SMS/800 Disconnect and Suspend Status functions to preclude transfers of toll free numbers directly between subscribers* (Dec. 6, 2000).

<sup>11</sup> *800-SUICIDE Order*, ¶ 8, fn. 26.

<sup>12</sup> *Earthlink, Inc. v. FCC*, 462 F.3d 1, 9 (D.C. Cir. 2006) (quoting *AT&T Corp. v. FCC*, 220 F.3d 607, 616 (D.C. Cir. 2000)).

Specifically, the *800-SUICIDE Order* is fatally flawed in at least three ways: (1) there was no record evidence to support its conclusion that the “emergency” reassignment was needed “to ensure an orderly transition of service without possible interruption”;<sup>13</sup> (2) there was no record information about KBHC’s finances to support the conclusion that “the financial vulnerability surrounding KBHC’s provision of the suicide prevention hotlines poses a significant threat to the continued availability” of the services;<sup>14</sup> and (3) there is no record evidence to support the proposition that KBHC’s finances are even relevant to the “potential loss of this critical public service.”<sup>15</sup> Each of these factors is an independent disconnect between the facts of the case and the conclusions reached.

**1. There was no “emergency” justifying a rule departure.**

In particular, there is no support for the Order’s finding that an emergency existed to warrant the extraordinary step of an involuntary number transfer. The only imminent threat for discontinuance of service in the record – Patriot’s November 28 statement indicating an intention to terminate service on January 8 – was withdrawn by Patriot’s filing with the Commission on January 3, 2007. There was no other suggestion of any sort that service would not continue indefinitely. And yet, in an order dated January 22, 2007, nearly three weeks after the termination notice was withdrawn by Patriot, the WCB concluded that a reassignment was justified based on “the record of discord among the parties” and “KBHC’s history of being unable to pay its service providers.”<sup>16</sup> The jeopardy to continued service created by the “record

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<sup>13</sup> *800-SUICIDE Order*, ¶ 8.

<sup>14</sup> *Id.* at ¶ 9.

<sup>15</sup> *Id.* at ¶ 28.

<sup>16</sup> *Id.* at ¶ 8.



of discord” is unexplained and unsupported, while KBHC’s finances are irrelevant as explained below.

**2. There was no record concerning KBHC’s finances.**

The record contains no evidentiary basis for the finding that “[t]he financial vulnerability surrounding KBHC’s provision of the suicide prevention hotlines poses a significant threat to the continued availability of this critical public service.”<sup>17</sup> The WCB made this finding (a) without making any inquiry, much less any finding, into the financial resources necessary to run the suicide prevention hotlines, and (b) with nothing in the record to judge KBHC’s current or future financial position other than unsupported allegations by SAMHSA about KBHC’s financial position going forward and the existence of a now-settled lawsuit.

The record contained only two items questioning KBHC’s finances. First, a copy of a complaint filed by Patriot in a California court and served on KBHC on December 22, 2007; KBHC had not even filed an Answer to the Complaint at the time of the *800-SUICIDE Order* – and Patriot and KBHC have now resolved the dispute. Second, a letter was submitted by AT&T, at the request of the WCB, stating that KBHC owes AT&T money.<sup>18</sup> At no time did the Bureau ever ask for KBHC’s financial records, nor did it conduct an audit of KBHC’s financial position. Nor did it seek information about the costs to operate the numbers. If it had, the WCB would have learned that two of the transferred numbers – (888) SUICIDE and (877) SUICIDA –

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<sup>17</sup> *800-SUICIDE Order* ¶ 9.

<sup>18</sup> The proceeding was conducted as a “permit but disclose” matter under the *ex parte* rules. Since SAMHSA submitted nothing for the record about KBHC’s finances – indeed SAMHSA made no *ex parte* filings of any sort – there are no other submissions known to KBHC. This is not surprising since no entity other than KBHC itself would have knowledge of KBHC’s finances.

receive less than 100 calls per month *combined*. Obviously, those two numbers pose no financial burden.

KBHC did, however, submit comments affirming its financial ability to operate the hotline.<sup>19</sup> The WCB rejected KBHC's statements about its own finances without explanation. Additionally, there was nothing in the record demonstrating that the continued operation of the numbers was affected by KBHC's current finances. In fact, the funds for the continued operation of the numbers were supplied by SAMHSA at the time of the *Order*, and SAMHSA had made clear that those numbers would continue to operate in the future.<sup>20</sup>

### **3. KBHC's finances were not relevant.**

The WCB made no apparent inquiry into the relevance of KBHC's finances to the continued operation of the hotlines. In fact, there is no connection between SAMHSA's control of the hotline numbers and its ability to pay for their operation – SAMHSA had paid for the lines previously, from 2001 to 2004 and from August 26, 2006 to the present. KBHC could have been penniless and the hotlines would continue to function without reassignment of the numbers. The best example of this fact is that since 2005, SAMHSA has funded another, far less successful hotline, using (800) 273-TALK. *SAMHSA is not the subscriber for that number, it is controlled by a private organization.* Moreover, there are scores of other toll free hotline services funded by federal agencies but operated and controlled by private organizations like KBHC.

Obviously then, there is no connection between KBHC's finances and operation of the hotlines *unless* SAMHSA determined it would not pay for them without reassignment.

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<sup>19</sup> Comments of the Kristin Brooks Hope Center, *In the Matter of Toll Free Service Access Codes*, CC Docket No. 95-155 (filed Dec. 20, 2006).

<sup>20</sup> Att. C -- Letter from Rina Hakimian, SAMHSA, to Lee Hejmanowski, Counsel for Patriot (Nov. 29, 2006).

And, as the expert agency on suicide prevention, if SAMHSA determined that 800-SUICIDE was not important enough to fund, then the FCC would not be in a position to disagree and order SAMHSA to do so. The *800-SUICIDE Order's* reliance on KBHC's finances as a basis for reassigning the number to SAMHSA thus suffers from a logical disconnect (in addition to the lack of proper factual support outlined above.) This logical disconnect makes clear that there is no "rational connection between the facts found and the choice made."<sup>21</sup>

## II. THE ORDER WAS BEYOND THE AUTHORITY DELEGATED TO THE WIRELINE COMPETITION BUREAU

In its order transferring the suicide prevention hotlines to SAMHSA, the WCB assumed the unprecedented authority to transfer toll free numbers outside of the toll free numbering rules in the absence of an emergency. Commission rules deny the Chief of the Wireline Competition Bureau authority to act on any requests which present novel question of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.<sup>22</sup> Here, the WCB departed from precedent and failed to rely on any rules or guidelines in granting SAMHSA's request

The Commission's toll free number regulations, published in the Code of Federal Regulations at 47 C.F.R. § 52.101 *et seq.*, do not provide for toll free numbers to be transferred directly from one subscriber to another subscriber.<sup>23</sup> In fact, they affirmatively prohibit such transfers, requiring that numbers be returned to Spare Status when subscribers no longer use

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<sup>21</sup> *Earthlink, Inc.*, 462 F.3d at 9.

<sup>22</sup> 47 C.F.R. § 0.292(a)(2).

<sup>23</sup> Letter from L. Charles Keller, Chief, Network Services Division, Common Carrier Bureau, to Mr. Michael Wade, President, Database Service Management, Inc, *Re: Modifying SMS/800 Disconnect and Suspend Status functions to preclude transfers of toll free numbers directly between subscribers*, DA 00-2754 (Dec. 6, 2000) (hereinafter Wade Letter); *See Toll Free Service Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-155, 12 F.C.C.Rcd. 11162 (1997).

them.<sup>24</sup> Therefore, the numbers may not be transferred from one end-user to another, but instead must be returned to the numbering pool for a quiet period and then are available on a first come, first served basis.<sup>25</sup> The Commission has consistently adhered to these rules, and their general applicability is not in question.<sup>26</sup>

Only once has the FCC directly intervened to transfer a toll free number directly from one end-user to another end-user. In September 2005, the Commission temporarily reassigned the number 1-800-RED-CROSS (1-800-733-2767) from 1-800 IDEAS.com to the American Red Cross in direct response to the emergency created by Hurricane Katrina.<sup>27</sup> The Commission stated, “In light of the scale of the disaster and the critical need to ensure efficient, effective, and sufficient disaster relief operations, we find that good cause exists to waive the relevant portions of the Commission’s rules to ensure reassignment of 1-800-RED-CROSS” to the National Chapter of the Red Cross.<sup>28</sup> In doing so, the FCC pointed to the “overwhelming public interest in assisting the disaster recovery efforts related to Hurricane Katrina” and particularly to the role of the American Red Cross as “a lead agency in the Nation’s National Response plan.”<sup>29</sup>

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<sup>24</sup> 47 C.F.R. § 52.103.

<sup>25</sup> SMS/800 Tariff, § 2.2.1 (“The Resp Org will not perform any functions using the SMS/800 which are not expressly provided for under this tariff . . . Any violation of this paragraph may result in immediate termination of service by the company.”).

<sup>26</sup> See Wade Letter.

<sup>27</sup> In the Matter of Toll Free Service Access Codes, *Order*, FCC 05-163 (Rel. Sep. 2, 2005). This action was taken up by the full Commission, and not the Wireline Competition Bureau. Later, the Wireline Competition Bureau would issue an order making the transfer permanent. In the Matter of Toll Free Service Access Codes, *Order*, DA 06-1750 (rel. Aug. 31, 2005).

<sup>28</sup> *Id.* ¶ 3.

<sup>29</sup> *Id.*

With respect to the suicide prevention hotlines, no similar emergency justified this departure from the rules governing toll free numbers, and thus the WCB inappropriately ordered the number transferred. KBHC has funds on hand to continue operating the numbers for a period of months and will be able to raise funds privately to continue its operation if SAMHSA chooses to cease funding those numbers. In the years prior to receiving funding from SAMHSA, KBHC had lined up sponsors to pay its costs. KBHC is confident that private donations again will provide more than adequate funding should the need arise.<sup>30</sup> These factors all point to the conclusion that no emergency existed, and that the WCB acted precipitously and without factual support in transferring the number from KBHC to SAMHSA. If the Commission reassigns the number back to KBHC, KBHC is committed to, and capable of, reassuming the operation of the suicide prevention hotlines.

**III. THE TRANSFER OF THE TOLL FREE NUMBERS CONSTITUTES A TAKING IN VIOLATION OF THE DUE PROCESS CLAUSE.**

Although toll free numbers are not “owned” by users in the traditional sense, the right to control a number has an inherent value.<sup>31</sup> While the courts have maintained a longstanding policy of deference toward legislative and executive judgments in Fifth Amendment cases, they have consistently required just compensation be provided to the former owners.<sup>32</sup> In *Play Time*, the First Circuit held that neither the SMS/800 Tariff nor the pertinent industry guidelines foreclosed a “finding that the right to control [a number] had inherent value

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<sup>30</sup> KBHC remains active in fundraising, owning and actively using the 1-800-SUICIDE trademark in its fundraising.

<sup>31</sup> *Play Time, Inc. v. Worldcom Inc.*, 123 F.3d 23 (1st Cir. 1997); SMS/800 Tariff, § 2.3.1(A)(7).

<sup>32</sup> *See Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

in the marketplace.”<sup>33</sup> Thus, the WCB’s decision to remove the number from the control of KBHC constitutes a taking, and must meet the requirements of the Fifth Amendment.

The Fifth Amendment to the United States Constitution states in pertinent part that “No person shall be . . . deprived of property, without *due process of law*; nor shall private property be taken for public use, *without just compensation*.”<sup>34</sup> To satisfy the requirements of the Fifth Amendment, “all that is required is that a reasonable, certain, and adequate provision for obtaining compensation exist at the time of the taking.”<sup>35</sup> Thus, for the reassignment of a phone number (a constitutional taking) to meet this standard, an administrative body’s decision concerning the level of compensation owed for a taking must be subject to judicial review to ensure just compensation, and be part of an “adequate processes for obtaining compensation.”<sup>36</sup>

The Commission itself recognized the importance of adequate compensation in its September 2005 and August 2006 orders reassigning 1-800-RED-CROSS to the national chapter of the Red Cross organization. The initial order relied on the representation of the American Red Cross that it would “reimburse 1-800 IDEAS.com for the reasonable cost of relinquishing this number” and that the Commission “rel[ied] upon this representation in making [the] decision.”<sup>37</sup> Similarly, the later order permanently reassigning the Red Cross number to that agency emphasized that the Red Cross and 800 Ideas.com were close to finalizing an agreement with respect to compensation and that 800 Ideas.com “did not oppose the request of the American Red

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<sup>33</sup> *Playtime, Inc.*, 123 F.3d at 31.

<sup>34</sup> U.S. Const., Amend. 5. (emphasis added)

<sup>35</sup> *Williamson County Regional Planning Com'n v. Hamilton Bank*, 473 U.S. 172, 194-95 (1985).

<sup>36</sup> *Gulf Power Co. v. United States*, 187 F.3d 1324, 1333 (11th Cir. 1999); *Williamson*, 473 U.S. at 194-95.

<sup>37</sup> *In the Matter of Toll Free Service Access Codes, Order*, FCC 05-163 (rel. Sep. 2, 2005) ¶ 6.

Cross for permanent reassignment.”<sup>38</sup> Both of those previous orders were granted, in part, on the assumption that the previous end-user would receive just compensation for the loss of its number.

Here, no adequate process for obtaining compensation exists, and thus the Due Process clause is violated. Commission rules do not provide for the Commission or for the judiciary to review the WCB’s decision, nor do the rules provide for just compensation. In fact, in order to effect its goal, the Bureau had to explicitly waive the Commission’s own rules.<sup>39</sup> Without the Commission rules to provide guidance, clearly no “reasonable, certain, and adequate provision for obtaining compensation” exists, thus the *SUICIDE Order* violates the Due Process clause.<sup>40</sup> Because of these Due Process concerns, the WCB’s decision should be reversed and the matter deferred until a rulemaking can result in adequate guidelines to provide both standards for an involuntary reassignment of a toll free number and for the determination of just compensation if such a reassignment occurs.

#### **IV. THE ORDER IS NOT IN THE PUBLIC INTEREST.**

KBHC has operated the suicide prevention hotlines continuously since 1998, answering more than two million calls and receiving numerous awards. Additionally, KBHC’s suicide prevention numbers serve a broader public than the United States. KBHC currently provides service in Canada, and will soon be providing service in Mexico as well. By law, SAMHSA cannot provide services to callers from outside of the United States. Therefore, it is

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<sup>38</sup> In the Matter of Toll Free Service Access Codes, *Order*, DA 06-1750 (rel. Aug. 31, 2005) fn. 10.

<sup>39</sup> *800-SUICIDE Order* ¶ 11 (citing to section 1.3 of the Commission’s rules).

<sup>40</sup> *Gulf Power Co. v. United States*, 187 F.3d 1324, 1333 (11th Cir. 1999; *Williamson*, 473 U.S. at 194-95.

essential that KBHC continue to maintain shared participation in the suicide prevention hotlines in order to ensure that calls from outside the country get routed to the appropriate help centers.

A. **In the Absence of Rule Violations, Fraud, or Emergency, the Commission Should Not Forcibly Transfer Numbers.**

The Commission has toll free numbering rules in place, and the WCB should not depart from them without proper consideration. Section 1 of the Telecommunications Act of 1934 and § 251(e)(1) of the 1996 Telecommunications Act require the Commission to “ensure the efficient, fair, and orderly allocation of toll free numbers.”<sup>41</sup> Implicit in a “fair and orderly” allocation of toll free numbers is the concept that, absent good cause, those making legal use of a particular toll free number assignment will continue to enjoy the right to use that number. This is particularly true of toll free “vanity numbers” – numbers which spell words or names identifying certain products and services.<sup>42</sup> These numbers are of value to the end-user because they generate high-visibility and consumer recognition when used in advertising.<sup>43</sup> Because of these characteristics, many end-users of toll free numbers invest substantial resources in advertising these numbers and associating them with particular products, services, or companies.

Here, the reassignment of 800-SUICIDE and the other suicide prevention numbers is in direct contradiction of the Commission’s policy of protecting the value end-users develop in their assigned vanity numbers. If the Commission simply reassigns numbers without cause or reassigns them without appropriate process, the value of these numbers is threatened, and both business and consumers suffer. In cases of a rules violation or fraud, the Commission

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<sup>41</sup> In the Matter of Toll Free Service Access Codes, *Order*, FCC 05-163 (rel. Sep. 2, 2005).

<sup>42</sup> In the Matter of Toll Free Service Access Codes, *Fourth Report and Order and Memorandum Opinion and Order*, FCC 98-48 (rel. Mar. 18, 1998) ¶ 11.

<sup>43</sup> *Id.*



may, of course, revoke the right of an end-user to make use of a number, but here there have been no allegations of misuse. Similarly, certain emergency situations may justify the transfer of toll free numbers, but such circumstances rarely occur, and are not present here, as both Patriot and SAMHSA had indicated that they would continue to operate the numbers until the dispute was resolved.<sup>44</sup>

**B. The FCC Would Set A Dangerous Precedent by Becoming the Arbiter of What Entity Has a “Better” or “More Useful” Purpose for a Toll Free Number.**

Toll free vanity numbers are a critical asset to many organizations in the United States. The FCC has established processes for their assignment which have been effective for several years. A departure from the first-come, first-served approach that has worked so well, toward a system where the Commission or the WCB forcibly reassigns numbers at the urging of a petitioner claiming a higher and better use, is a potential nightmare. The floodgates will open and the Commission will need comparative hearings to adjudicate the claims. Nothing could be worse.

Additionally, seizure of toll free numbers from private charitable organizations in order to transfer them to government agencies is contrary to the Administration’s policy of encouraging the privatization of social services wherever possible. KBHC created these lines itself and built value in them through its advertising campaign. The suicide prevention hotlines were founded with the proceeds of Kristin Brooks’ life insurance and the sale of Mr. Brooks home. KBHC has operated these numbers successfully for many years – to forcibly remove

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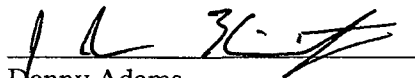
<sup>44</sup> Att. C -- Letter from Rina Hakimian, SAMHSA, to Lee Hejmanowski, Counsel for Patriot (Nov. 29, 2006); Opposition of Patriot Communications LLC to Kristin Brooks Hope Center’s Petition for Cease and Desist Order and For Sanctions, *In the Matter of Kristin Brooks Hope Center and 1-800-SUICIDE*, CC Docket No. 95-155 (filed Jan. 3, 2007) at 1.

them from KBHC and give them to the government, regardless of how good the government's intentions, sends a chilling message to non-profit organizations, like KBHC, who attempt to provide critical public services.

### CONCLUSION

For the foregoing reasons, KBHC respectfully requests that the Commission reverse the order of the Wireline Competition Bureau and order the transfer of the suicide prevention hotlines back to KBHC. If the Commission believes that forced transfers are necessary, then the Commission should initiate a rulemaking to establish rules for when and how such transfers are to occur, and standards should be set to govern such proceedings.

Respectfully submitted,



Danny Adams

Todd D. Daubert

J. Isaac Himowitz

KELLEY DRYE & WARREN LLP

3050 K. Street, NW, Suite 400

Washington, DC 20007

(202) 342-8400

(202) 342-8451 (facsimile)

[dadams@kelleydrye.com](mailto:dadams@kelleydrye.com)

Counsel for Petitioner

KRISTIN BROOKS HOPE CENTER

February 21, 2007

# ATTACHMENT A

Ref: CC Docket No. 95-155  
Toll Free Service Access Codes

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Dear Mr. Martin:

I am writing to renew and update the Department of Health and Human Services' request that the Federal Communications Commission (FCC) reassign five toll free numbers utilized as suicide prevention hotlines to the Substance Abuse and Mental Health Services Administration (SAMHSA), a component of the U.S. Department of Health and Human Services (HHS). The five toll free numbers are: (800) 784-2433 (1-800-SUICIDE), (877) 784-2432 (1-877-SUICIDE), (888) 784-2433 (1-888-SUICIDE), (800) 442-4673 (1-800-442-HOPE), and (800) 827-7571.

On August 25, 2006, Secretary Leavitt submitted a request (enclosed) to the FCC for assignment of the number 1-800-SUICIDE to SAMHSA. On that date, SAMHSA was able to reach agreement with the telecommunications provider, Patriot Communications, LLC, and the Kristin Brooks Hope Center (KBHC) to assume financial responsibility for the five lines listed above. McLeodUSA Telecommunications is the Responsible Organization for the toll free numbers. SAMHSA has worked diligently to establish a permanent arrangement to support these critical lines.

Patriot recently informed SAMHSA that absent a binding, written agreement permitting unencumbered use of the lines, Patriot will cease routing telephone calls to the toll free telephone numbers on January 8, 2007. The total call volume for these five toll free lines is approximately 30,000 per month. Each call potentially represents a caller in crisis, seeking assistance for a mental health emergency. We seek this reassignment in order to minimize the potential for loss of life due to callers being unable to connect immediately with a crisis center that can provide counseling or dispatch rescue services if needed.

As stated in the August 25, 2006 letter to you, HHS is gravely concerned that permitting these toll free numbers to be disconnected and unused is not in the best interests of the public. Therefore, SAMHSA respectfully requests that the Chairman exercise his authority to waive section 47 CFR §52.111 of the regulations governing toll-free numbers and any other rules necessary, so that (800) 784-2433, (877) 784-2432, (888) 784-2433, (800) 442-4673 and  
Page 2 – The Honorable Kevin J. Martin

(800) 827-7571 are assigned to SAMHSA on a permanent basis. We request further that the FCC direct McLeodUSA, Inc., the current Responsible Organization, to permit SAMHSA to port the toll free numbers to the Responsible Organization of its choosing, consistent with FCC rules on portability.

Due to the urgency of the situation, we respectfully request that FCC consider this matter on an expedited basis. Further, we respectfully request that FCC waive the public comment period for this request. If these five toll free numbers are placed on disconnect status, then each day, or even every hour, during which calls go unanswered, may pose a risk to callers in crisis. Therefore, to permit a public comment period while the line remains idle would defeat the very purpose of allowing an immediate reassignment of the number to SAMHSA.

We would be happy to respond to any questions you may have, and thank you for your attention to this important matter.

Sincerely,

Eric B. Broderick, D.D.S., M.P.H.  
Acting Deputy Administrator  
Assistant Surgeon General

Enclosure

# ATTACHMENT B



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

95-155

99-200

AUG 25 2006

The Honorable Kevin J. Martin  
Chairman, Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

RECEIVED

AUG 25 2006

Federal Communications Commission  
Office of the Secretary

Dear Mr. Martin:

I am writing to request that in the event that the telephone number 1-800-SUICIDE is placed on disconnect status, which may occur on August 26, 2006, the Federal Communications Commission (FCC) reassign the 1-800-SUICIDE telephone number from the Kristin Brooks Hope Center (KBHC) to the Substance Abuse and Mental Health Services Administration (SAMHSA), a component of the U.S. Department of Health and Human Services (HHS). This reassignment is being requested in order to minimize the potential for loss of life due to 1-800-SUICIDE callers being unable to connect immediately with a crisis center that can dispatch rescue services.

Suicide is often a preventable tragedy. Last year alone, over 7 percent of all American youth – 1.8 million young people – had thoughts about killing themselves. Approximately 900,000 of these youth made plans to commit suicide; 712,000 acted on those plans by attempting suicide. Across the country, someone dies by suicide every 17 minutes. In the United States, more people die every year by suicide (30,000) than by homicide (18,000).

HHS is gravely concerned that permitting 1-800-SUICIDE to be disconnected and unused is not in the best interests of the public. Therefore, SAMHSA respectfully requests that you, as Chairman, FCC, exercise your authority under section 47 CFR §52.111 of the regulations governing toll-free numbers, and waive any other rules necessary so that, *if and as soon as 1-800-SUICIDE is placed on disconnect status by the responsible organization*, the number 1-800-SUICIDE (1-800-784-2433) will be reassigned to SAMHSA on a temporary basis, so that suicidal callers will not be confronted with a non-working line, or be advised that they must dial yet another number before receiving assistance.

Due to the urgent situation, we respectfully request that FCC consider this matter on an expedited basis and waive the public comment period for this request. If the 1-800-SUICIDE number is placed on disconnect status, then each day, or even every hour, during which calls go unanswered, may pose a risk to callers in crisis. Therefore, to permit a public comment period while the line remains idle would defeat the purpose of an immediate reassignment of the number to SAMHSA. Enclosed is a summary of key facts related to this case. In addition, Admiral Eric B. Broderick, Acting Deputy Administrator, SAMHSA, (240) 276-2000, is happy to answer any questions you may have. Thank you for your consideration of this urgent request.

Sincerely,

### **Background Information: 1-800-SUICIDE**

- As part of its public health mission, the Substance Abuse and Mental Health Services Administration (SAMHSA), a component agency of the U.S. Department of Health and Human Services (HHS), supports efforts to prevent suicide through the Garrett Lee Smith Memorial Act programs for youth suicide prevention and the National Suicide Prevention Lifeline (1-800-273-TALK) which serves as a central switchboard that immediately connects callers to over 120 certified crisis centers around the country.
- Prior to the establishment of 1-800-273-TALK, SAMHSA awarded a cooperative agreement to the American Association of Suicidology (AAS) to certify and network crisis centers from around the country into a national network using a single toll-free number. The number used by the hotline at that time was 1-800-SUICIDE. The Kristin Brooks Hope Center (KBHC), a private, not-for-profit organization, has operated the 1-800-SUICIDE telephone line since 1999 and was a subrecipient of the cooperative agreement awarded to AAS from September 2001 through March 2005.
- SAMHSA and AAS had differences of opinion regarding the administration of that cooperative agreement. Those differences have led to ongoing discussions regarding payments under the cooperative agreement. SAMHSA stands willing to consider any valid claims from AAS regarding this cooperative agreement. However, resolution of potential fiscal issues between AAS and SAMHSA arising under the former cooperative agreement should not prevent the 1-800-SUICIDE number from remaining open to callers in crisis.
- Recently, KBHC announced significant financial difficulties and that the 1-800-SUICIDE number is scheduled to be disconnected on August 26 by Patriot Communications, the current telecommunications provider. SAMHSA has worked diligently to arrange for an orderly transfer of control of the toll-free number but has not been able to reach an agreement with KBHC. SAMHSA wishes to prevent any risk to the public health that could arise from the sudden disconnection of this national hotline which currently receives 30,000 calls per month. In furtherance of that goal, SAMHSA has offered to operate the hotline in parallel with its current initiative, the National Suicide Prevention Lifeline 1-800-273-TALK. KBHC has refused.
- If 1-800-SUICIDE ceases to accept calls without a mechanism for orderly transfer of callers to an active hotline, individuals who are in the process of attempting suicide, or otherwise at risk for suicide, will get no response and may not be rescued. HHS believes this constitutes a public health crisis that requires immediate intervention.



# ATTACHMENT C



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Office of the Secretary  
Office of the General CounselPublic Health Division  
Room 4A-53 Parklawn Bldg.  
5600 Fishers Lane  
Rockville, MD 20857  
(301) 443-2644  
FAX: (301) 443-2639

November 29, 2006

Lee E. Hejmanowski, Esq.  
Seltzer Caplan McMahon Vitek  
2100 Symphony Towers  
750 B Street  
San Diego, CA 92101Danny E. Adams, Esq.  
Kelley Drye & Warren  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, D.C. 20007-5108Heather Hendrickson  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington DC 20554William A. Haas  
V.P. and Deputy General Counsel  
McLeodUSA Telecommunications Services, Inc.  
6400 C Street, SW  
Cedar Rapids, IA 52406Re: Toll Free Telephone Numbers

Dear Mr. Hejmanowski:

We represent the Substance Abuse and Mental Health Services Administration (SAMHSA), a component of the U.S. Department of Health and Human Services (HHS). We have reviewed the letter dated November 28, 2006 sent on behalf of your client, Patriot Communications LLC (Patriot).

A more comprehensive response will be forthcoming. However, in the meantime, please note that SAMHSA would like for Patriot to continue support for the following three toll free telephone lines identified in your letter:

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(800) 784-2433	1-800-SUICIDE
(877) 784-2432	1-877-SUICIDA
(888) 784-2433	1-888-SUICIDE

In addition to the above, SAMHSA wishes for Patriot to continue to support the following two toll free telephone lines:

(800) 442-4673  
(800) 827-7571

If you have additional questions or wish to discuss any of the above, please contact me or my colleague Constance Foster at 301-443-2644. Thank you very much for your cooperation.

Sincerely,



Rina Hakimian  
Attorney  
SAMHSA Team

cc: Eric Broderick, D.D.S., M.P.H., SAMHSA